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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-979]

Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Determination of Investigation Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 5, 2015, the United States Court of International Trade (“CIT”) issued its final judgment in Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States Consol. Court No. 13-00012<sup>1</sup> sustaining the Department of Commerce’s (“the Department”) final results of remand redetermination.<sup>2</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s Final Determination and Amended Final Determination in the antidumping duty investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules (“solar cells”), from the People’s

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<sup>1</sup> See Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States, Consol. Court No. 13-00012, Slip Op. 15-113 (CIT October 5, 2015) (“Jiangsu II”).

<sup>2</sup> See Final Results of Redetermination Pursuant to Court Order, Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States, Consol. Court No. 13-00012 (April 20, 2015) (“Remand Results”).

Republic of China (“PRC”),<sup>3</sup> and is amending its determination with respect to granting separate rates to three specific respondents: Tianwei New Energy (Chengdu) PV Module Co., Ltd. (“Tianwei New Energy”), Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd. (“Dongfang Electric”), and Sumec Hardware & Tools Co., Ltd. (“Sumec Hardware”).

DATES: Effective Date: October 15, 2015.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance – International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-2769.

#### SUPPLEMENTARY INFORMATION:

##### Background

Subsequent to the publication of the Amended Final Determination, SolarWorld Americas, Inc. filed a complaint with the CIT challenging, in part, the Department’s determination that certain separate-rate applicants were eligible for a separate rate.

On June 6, 2014, the United States requested a voluntary remand to reconsider and reevaluate its determination to grant a separate rate to four specific respondents: Tianwei New Energy, Dongfang Electric, Sumec Hardware, and Ningbo ETDZ Holdings Ltd. (“Ningbo ETDZ”). On November 20, 2014, the CIT granted the Department’s request for a voluntary remand.

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<sup>3</sup> See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) (“Final Determination”); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012) (“Amended Final Determination”) (collectively, “Investigation Final Determination”).

On April 20, 2015, the Department issued its Remand Results, in which the Department determined that Tianwei New Energy, Dongfang Electric, and Sumec Hardware did not meet the criteria for a separate rate, but that Ningbo ETDZ did meet the criteria for a separate rate.

On October 5, 2015, the Court issued its decision in Jiangsu II sustaining the Department's Remand Results.<sup>4</sup>

#### Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 5, 2015, judgment sustaining the Department’s Remand Results to not grant separate rates to Tianwei New Energy, Dongfang Electric, and Sumec Hardware, constitutes a final decision of that court that is not in harmony with the Department’s Investigation Final Determination. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

#### Amended Final Determination

Because there is now a final court decision with respect to this case, the Department is amending its Investigation Final Determination with respect to granting separate rates to Tianwei New Energy, Dongfang Electric, and Sumec Hardware. We have found that Tianwei New

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<sup>4</sup> See Jiangsu II.

Energy, Dongfang Electric, and Sumec Hardware do not meet the criteria for a separate rate. Accordingly, these companies are part of the PRC-wide entity. Additionally, the Department will instruct U.S. Customs and Border Protection to collect cash deposits from Tianwei New Energy, Dongfang Electric, and Sumec Hardware at the cash deposit rate applicable to the PRC-wide entity, effective October 15, 2015. The current cash deposit rate applicable to the PRC-wide entity is 238.95 percent.<sup>5</sup>

This notice is issued and published in accordance with sections 516A(e)(1), 735(d), and 777(i)(1) of the Act.

Dated: November 17, 2015.

Paul Piquado,  
Assistant Secretary  
for Enforcement and Compliance.

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<sup>5</sup> Although the Department noted in the Remand Results that the cash deposit rate applicable to the PRC-wide entity is 249.96 percent, the current cash deposit rate, after adjusting for subsidies, is 238.95 percent. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013, 80 FR 40998, 41002 n.50 (July 14, 2015).

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